GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

TWD – Appeal Petition filed by Sri P. Anil Kumar, S/o P.V. Narayana Rao, Alur (Post), Kurnool District under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (A.P. Act No.16/1993), against the proceedings issued in Dis.C6.918/M/2005, Dt:26.11.2005 by. the District Collector, Kurnool, Kurnool, cancelling his ST Chenchu caste certificate – Appeal Petition dismissed - Orders - Issued.

TRIBAL WELFARE (CV) DEPARTMENT

G.O.Ms.No.71, Dated.16.11.2023.

Read the following:-

1. Proceedings of Dist. Collector, Kurnool, Dis.C6.918/M/2005, Dt:26.11.2005.
2. Appeal Petition filed by P. Anil Kumar, S/o P.V.Narayana Rao, Alur(Post), Kurnool District.
3. Govt. Memo No.422/CV.2/2006, TW(CV.2) Deptt., dated 04.03.2006.
4. From the Collector, Kurnool, Lr.Rc.No.C6/621/M/2006, Dt:28.04.2006.
5. Govt. Memo No.422/CV.2/2006, T.W.(CV.2) Deptt., dated 28.04.2012, 5.06.2015, 7.11.2015, 30.04.2018, 04.07.2018, 07.08.2018, 17.09.2018, 22.10.2018, 27.12.2018, 09.01.2019, 23.01.2019, 09.10.2019, 10.09.2020, 17.11.2020, 07.07.2021, 04.08.2021, 08.09.2021, 10.11.2021, 02.03.2022, 26.06.2023 & 01.08.2023.

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ORDER:

In the Proceedings 1st read above, the Collector & District Magistrate, Kurnool had issued orders cancelling the "ST Chenchu" community certificate of Sri P. Anil Kumar, S/o P.V. Narayana Rao, obtained from the then Mandal Revenue Officer, Alur, dt.15.11.2002.

2. In the reference 2nd read above, Sri P. Anil Kumar, S/o P.V. Narayana Rao has filed Appeal Petition before the Government against the Proceedings of the District Collector, Kurnool. After examining the said Appeal Petition, Government have admitted the same and Para-wise remarks on the grounds filed by the Appellant along with connected records were called for from the District Collector, Kurnool vide Govt. Memo 3rd read above.

3. In the letter 4th read above, the Collector & District Magistrate, Kurnool has furnished the para-wise remarks on the Appeal Petition filed by Sri P. Anil Kumar, S/o P.V. Narayana Rao.

4. The said Appeal Petition has been posted for hearing before the Hon'ble Appellate Authority on several dates and finally heard on 26.08.2023. During the course of the hearing and on perusal of the records/ the copies of evidences/ academic record/ grounds filed by the Appellant/ Para-wise remarks submitted by the District Collector, Kurnool and proceedings of the District Collector, Kurnool, dated 26.11.2005, the Appellate authority has observed that;

I. This Appeal Petition is filed by Sri P. Anil Kumar, S/o P.V. Narayana Rao, under Section 7(2) of The AP SC, ST& BCs) Regulation of Issue of Community Certificates Act, 1993 and Rules, 1997(Act 16 of 1993) against the impugned Proceedings issued in D.Dis.C6.918/M/2005, dated 26.11.2005 by the Collector & District Magistrate, Kurnool, cancelling the S.T(Chenchu) caste certificate dated:15.11.2002 issued by the Mandal Revenue Officer, Alur in favour of him with immediate effect.

II. The matter came for hearing finally before the Revision Authority on 26-08- 2023. The Appellant has been continuously absent. The Tahsildar, Alur reported that the Appellant is not residing in the given village-Alur for last 15 years. It seems that the Appellant is not interested in pursuing his case. Hence the following order is made on perusal of the material documents/records available.

III. The main grounds of the Appellant are that his mother Smt. V. Veeramma belonging to Chenchu caste,(ST) and served as- a Government servant ANM and retired in the year 2003, and his father Sri. P. V. Narayana Rao, belonging to Brahmin Community/Non Tribal and he is dependent on his mother and staying with her and that his School records reveal his caste as Chenchu,(ST) and the M.R.O., Alur, after thorough verification and enquiry issued community certificate on 15.11.2002, showing his caste as Chenchu.

[Contd..on P.2]

IV. The Appellant has further contended that the government issued G.O.Ms.No.371, Employment & Social Welfare (B.2) Dept., Dated 13.4.1976 which has dealt with status of children born to either parent belongs to SC, ST or BC and that as per the said GO a child of inter caste can be treated as one belonging to SC, ST or BC and the child is entitled to reservations in services etc. allowed for that caste and the lower caste of either parent in the inter-caste marriage shall be deemed to be the caste of the child and shall be eligible for the reservation of the seats made for the caste and that he has been following the traditions and custom of his mother community and the impugned proceedings dated 26.11.2005 issued, cancelling his caste certificate is illegal, improper and contrary to law and no opportunity was provided to him and his marriage with a boya girl cannot be a ground for cancellation of certificate and requested to set aside the impugned proceedings issued by the District Collector & District Magistrate, Kurnool.

V. The District Collector and District Magistrate has furnished para-wise remarks denying the contentions of the Appellant.

VI. As per the contention of the Collector, the Commissioner of Tribal Welfare referred the case of the Revision Petitioner to the District Collector to conduct an enquiry. Accordingly the matter was placed before the District Level Scrutiny Committee, after due enquiry into the matter the District Level Scrutiny Committee submitted its report to the Collector. The collector examined the findings of the District Level Scrutiny Committee and the material available on record and cancelled the fraudulent ST-Chenchu certificate obtained by Revision Petitioner here in from the Mandal Revenue Officer 'Alur'.

VII. The District collector has stated that as agreed, the mother of the appellant belonging to ST- Chenchu and while his father belongs to Brahmin Community and his marriage was with a Boya Girl, BC Community' The further contention of the District collector is that the GO.Ms.No.371, education and social welfare (B2) Dept., dt.13.4.76 was issued only to extend certain incentives and non-statutory benefits, and it directed to follow the guidelines laid down by the Government of India in their letter No.39/37/73-SCT-1, dt.04.03.1976 issued by the Ministry of Home Affairs which cites that the test for determining the Caste Status of the Children born of inter caste marriages is "It is recognition and acceptance by the Society of the Children born out of a marriage between a member of Scheduled Tribes with an outsider, which is the main determining factor irrespective of whether the Tribe in matriarchal or patriarchal. The final result will always depend on whether the child was accepted as member of the Scheduled Tribe or not".

VIII. The District collector has further stated that in the present case the question involved is not for admission into educational institutions but for appointment as teacher post in ITDA under ST Quota as such the Appellant is not entitled to claim the benefit of ST reservation. The collector has further stated that a proper notice was given in Form VI to the appellant vide Rc.C6/918/MI2005, dt.19.9.2005 wherein he was categorically directed to produce all the documentary evidence in support of his community claim by giving a reasonable opportunity to him. The District Collector has further stated that the letter of the Commissioner in Rc.No.970/41/04/TRI/VC-7, dt.04.8.2005 was taken as a complaint letter and an independent enquiry was conducted in the matter and the certificate has been cancelled not on the basis of appellant marrying a Boya girl but on other grounds. The District Collector has further stated that the Appellant studied class 1 to 10th in Nornokal (V), which is a nearby village of his father, and the appellant was brought up in the surroundings of the Community of his father. In support of his case he has cited a ruling of Hon'ble Supreme Court in Shoba Hymavathi, D/o. Setty Gangadhara Swamy and other' on 28-01-2005.

IX. In this case, the Appellant claims that he is entitled to claim the social status of Chenchu-ST on the basis of his mother beings ST-Chenchu in terms of G.O.Ms.No.371, dated. 13-4-1976.

X. The background of case and rival submissions give rise to following points for consideration.

XI. The sole question calls for determination in this appeal is, as to whether the offshoot of the tribal women and non-tribal man could claim status of Scheduled Tribe as per the G.O.Ms.No.371, Education and Social Welfare (B2) Dept., dt.13.04.76 ?

[Contd..on P.3]

XII. In this case, the Appellant admits that his father is belonging to Brahmin community/ Non ST and his mother is ST-Chenchu. The District Collector& District Magistrate has also not disputed this fact. However the Appellant claims that being the child born out of the said wed-lock, he is entitled to get Scheduled Tribe Certificate. But the District Collector says that the Appellant is entitled only to non-statutory benefits.

XIII. Now the key question is what is the legal validity of said GO.Ms.No.371 in determining the community status of a child born to ST mother and non ST father in the given facts of the case.

XIV. It is relevant to cite the decision of the Hon'ble High Court which dealt similar facts of the case and given its ruling in respect of the said GO.Ms.No.371. The High Court, held that, 'Thus, it is clear that persons belonging to categories of caste indicated under Articles 341 and 342 alone are to be recognised as Scheduled Caste or Scheduled Tribe, No claim from persons of third categories as provided by the Government of Andhra Pradesh in G.O.MS. No.371, dated 13-4-1976 be accepted for the purpose of granting benefits to the children born out of the inter-caste marriages from out of the quota meant for either S.C., S.T. or B.Cs. The High Court further held that "The said G.O., by all means, cannot over-ride the Presidential Order. As discussed by me above, in W.P.No.14875/85, K. Ramaswamy, J. (as he then was) has held that the said G.O. is ultra-vires to the powers of the executive and runs contrary to the Constitution, by an order dated 19-2-1986. Therefore, the petitioner's claim that he is entitled to get the benefit under the said G.O. is meaningless as the said G.O. has been held as ultra-vires by this Court way back in the year 1986." The High court finally declined to treat such child as ST. **(W.S.V. Satyanarayana vs Director of Tribal Welfare And ... on 16 January, 1996-1996 (1) ALT 170)**

XV. Hence the claim of the Appellant is legally not acceptable on the strength of GO.Ms.No. 371. Moreover the report shows that during the enquiry, the Appellant admitted that he studied in Nemakallu village and Atmakur town in Kurnool Dist and now and then they used to visit Byrluti village i.e. his mother's native place and also met with their relatives during the marriages and they also followed the customs and traditions of Chenchu caste people. The report further shows that the Appellant failed to produce any substantial evidence showing that he was bought up under the surroundings of his mother's community. Moreover he is not being continued in the Tribal fold, having married a girl belongs to Boya (B.C) Community. Though the social affinity test is not a litmus test but the cases of this nature will have a bearing on determination of community status of an individual.

XVI. When the burden of proof is on the appellant under section 6 of the Act, he has to establish that he belongs to the community to which he claims to belong, it is for him to produce valid evidence in support for the claim made by him.

XVII. Therefore the Appellant is not entitled to avail any benefit intended exclusively meant for the Scheduled Tribes. Hence the claim of the Appellant on a ground that he is entitled to secure benefits as ST in pursuance of GO.Ms.No.371 is also disallowed.

XVIII. As laid down by the Supreme Court in Kumar Madhuri Patil & another Vs Addl. Commissioner, Tribal Welfare, (AIR 1995 SC), when it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue.

XIX. The District collector is empowered under section 5(1), either on suo-motu or on a written complaint in person, can call for the record of any person who obtained false Community Certificate either before or after the commencement of the Act and enquire into the correctness of such certificate. If the District collector is of the opinion that the certificate was obtained fraudulently, he shall by notification cancel the certificate after giving the person concerned an opportunity of making a representation.

XX. Further as per rule 9(9) of A.P. SC,ST,& BC issue of Community and Nativity and Date of Birth Certificate Rules, 1997, the Collector or Government either suo-moto, or on a written complaint by any person or on request by an employer/ educational institution appointing authority shall enquire into the correctness of any Community, Nativity, Date of Birth Certificate already issued and if it is found that the certificates is obtained fraudulently then the District collector of the Government as the case may be shall cancel the Certificate as per section (5) of the Act. The complaint referred by the Commissioner of Tribal Welfare in the present case for an enquiry is in accordance with the provisions of law. Therefore there is no irregularity in referring the complaint to the collector by the Commissioner of Tribal Welfare.

[Contd..on P.4]

XXI. In view of the above rulings of the Higher Courts and discussions made, 'there is no irregularity or illegality in cancelling the community certificate issued to the appellant herein as ST-Chenchu. Therefore the impugned order passed by the Collector & District Magistrate, Kurnool, cancelling the S.T (Chenchu) caste certificate dated:15.11.2002 issued by the Mandal Revenue Officer' Alur in favour of the Appellant is hereby upheld. In the result, Appeal Petition is dismissed. As a sequel interim orders if any passed in the matter are hereby vacated. Appeal is disposed of accordingly.

5. Government after careful examination of the appeal petition and the circumstances stated supra and in exercise of the powers conferred under Section 7(2) of A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), and rules made there under, decide that the appeal petition filed by Sri P. Anil Kumar, S/o P.V. Narayana Rao does not deserve any interference. Hence, the proceedings in the Dis.C6.918/M/2005, Dt:26.11.2005 of the District Collector, Kurnool are hereby upheld and the appeal petition filed by Sri P. Anil Kumar, S/o P.V. Narayana Rao is hereby dismissed. The certificate issued by the then M.R.O, Kurnool, deemed to be cancelled.

6. The Collector & District Magistrate, Kurnool is directed to take necessary consequential action in the matter, as per the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), and rules made therein.

7. The records (Rc.C5(M)/262/2005, containing pages NF 1-9 and CF 1 to 25) received from the Collector & District Magistrate, Kurnool are returned herewith in original to the Collector & District Magistrate, Kurnool and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

KANTILAL DANDE
SECRETARY TO GOVERNMENT

To
The Collector & District Magistrate, Kurnool.(we)
(With original Records) **(BY RPAD)**

Sri P. Anil Kumar, S/o P.V. Narayana Rao,
H.No.4/43-B, Alur (Post), Kurnool District. **(BY RP)**

Copy to:
The OSD to Hon'ble Deputy CM(TW).
The PS to Secretary(TW).
The Commissioner of Printing Stationery & Stores Purchase, A.P., Vijayawada.
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// FORWARDED:: BY ORDER //

M. Srinivasa Rao
SECTION OFFICER